Thunder Bay

Interim
Report of Commission

Nov 4th 1922

Mr J A Ross

(Nov. 4 F.W.W.)

To His Honour, Henry Cockshutt, Esq.,
Lieutenant-Governor of the Province of Ontario.

May it please Your Honour:-

The Commissioners appointed under Letters Patent bearing date the 20th April, 1922, respectfully beg to report as follows:-

We were by said Letters Patent directed to inquire into and report, among other things, upon all power developments undertaken by the Hydro-Electric Power Commission of Ontario, hereinafter referred to as the "Commission" and generally on all matters of expenditure and administration by them. Soon after the commencement of our inquiry it was represented to us on behalf of the City of Fort William that a situation existed in the Thunder Bay District which urgently demanded our attention. A preliminary investigation of the financial position of the System has shown that the representations of Fort William were justified, and we have thought it well to place before you this Interim Report dealing with the financial situation as we have found it.

In connection with our investigation we held public hearings at Port Arthur and Fort William, and afterwards in Toronto. We also obtained, upon our request, from the Commission, a detailed statement of their proposals for dealing with the situation in the Nipigon situation. These statements and the correspondence in connection with them, together with a study and analysis of them by our engineers,

To Sir Andrew, Henry Cockburn, Esq.,
Lieutenant-Governor of the Province of Ontario.

May it please Your Excellency:-

The Commissioners appointed under Letters Patent bearing date the 29th April, 1897, respectfully beg to report as follows:-

We were by said Letters Patent directed to inquire into and report, among other things, upon all power transmission undertaken by the Niagara-Electric Power Commission or Ontario, hereinafter referred to as the "Commission" and generally on all matters of expenditure and administration by them. Soon after the commencement of our inquiry it was represented to us on behalf of the City of Fort William that a situation existed in the Province Gas Fixtures which urgently demanded our attention. A preliminary investigation of the financial position of the Province showed that the representation of Fort William were justified, and we have thought it well to place before Your Only Matters Report dealing with the financial situation as we have found it.

In connection with our investigation we held public inquiries at Port Arthur and Fort William, and extensive in Toronto. We also obtained, upon our requests, from the Commission, a detailed statement of their proceedings dealing with the situation in the Nipigon-situation. These statements and the correspondence in connection with them, together with a study the minutes of them by our officers,

are appended to this report as Schedules "A" and "B" respectively.

From the evidence we have taken the following facts appear: In 1917 the cities of Port Arthur and Fort William entered into the usual form of contract with the Commission by which the Commission was authorized to construct or purchase works required to supply power, each municipality being bound to pay for the cost of the works by paying a rate for power which would include the necessary sinking fund and other charges. Although the contracts came into force in March,1918, when they were ratified by the Legislature, Port Arthur did not begin to take power until December,1920; and Fort William is not under obligation to take power until August, 1926. Both cities had been previously supplied with power generated at Kakabeka Falls, on the Kaministiquia River, west of Fort William, by the Kaministiquia Power Company, Limited. The City of Fort William has a contract direct with the Company which does not expire until August, 1926. The City of Port Arthur had a 10-year contract expiring in April, 1920,but afterwards extended to December, 1920, through the Commission which bought power from the Kaministiquia Power Company and sold it to Port Arthur. The price paid by Port Arthur was $15. per horsepower at 22,000 volts; in Fort William the price was $20. per horsepower at 2200 volts.

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From the evidence we have taken the following facts appear: In 1917 the cities of Port Arthur and Port William entered into the usual form of contract with the Commission by which the Commission was authorized to construct or purchase works required to supply power, each municipality being bound to pay for the cost of the works by paying a rate for power which would include the necessary sinking fund and other charges. Although the contracts came into force in March,1919, when they were ratified by the legislature, Port Arthur did not begin to take power until December,1920; and Port William is not under obligation to take power until August, 1926. Both cities had been previously supplied with power generated at Kakabeka Falls, on the Kaministiquia River, west of Port William, by the Kaministiquia Power Company, Limited. The City of Port William has a contract always with the Company which does not expire until August, 1924. The City of Port Arthur had a 10-year contract expiring in April, 1920, but afterwards extended to December, 1920, through the Commission which bought power from the Kaministiquia Power Company and sold it to Port Arthur. The price paid by Port Arthur was $18. per horsepower at 22,000 volts; in Port William the price was $20. per horsepower at 2300 volts.

When the proposal of an agreement with the Commission was before the electors of the two cities in January, 1917, it was represented by the officials of the Commission that the prices of power under the new proposed contract would be substantially lower than they had been under the old arrangements with the Kaministiquia Power Co. The expectation, and the anticipation of demands for power larger than the Company would be able to supply, were the reasons which induced the two cities to enter into the contracts with the Commission. The alternative would have been to allow the Kaministiquia Power Co. to undertake a further development on the Kaministiquia River, which would have been possible at a point in the river called Silver Falls, or Dog Lake, fifteen miles above the Company's present plant. Instead of allowing the Company to develop this power the Commission proposed itself to construct a plant at Dog Lake, and it was this proposal that was the basis of the contracts between the cities and the Commission, though the terms of the contracts were broad enough to authorized a development elsewhere. There appears to have been some discussion of the possibility of taking over the Kaministiquia Power Company's plant and some steps were in fact taken by Sir Adam Beck to this end.

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It is laid down by the Power Commission Act as a prerequisite to the making of a contract between the Commission and a municipality that "the Commission shall .....furnish to the corporation a statement of the maximum price per horsepower at which electrical power or energy will be supplied ..... and an estimate of the cost of constructing or providing a transmission line"; and that "the provisional contract shall not be binding upon the corporation unless and until a by-law approving the same has been submitted to and has received the assent ..... of the electors qualified to vote on money by-laws; and the estimates of the Commission or a summary thereof and a copy of the provisional contract <u>shall be published with or form part of the by-law</u>".

It was clearly the intention of the Act that the estimates and maximum price of power should serve as a basis of the contracts between municipalities and the Commission. It appears, however, that the Commission almost from the beginning adopted a policy of disregarding the terms of the Act. In the case of Port Arthur and Fort William certain estimates were furnished before the vote of the electors of the two cities on the first of January, 1917, and again before the second vote in Fort William in September, 1917. The municipalities were never furnished

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with estimates stating a "maximum price" nor were the estimates published with the by-law as required by the statute. The omission to publish the estimates was due to the explicit instructions given by the officials of the Commission. On the occasion of the second vote in Fort William, the matter was the subject of communications between the Commission and the municipality in which the latter was advised both by the Secretary and the Chief Engineer of the Commission that "estimates must not be included in the by-law, but there is no objection to publishing the estimated figures and any other explanatory matter separate from the by-law. These matters are important."

Mr. Pope, Secretary of the Commission, stated in his evidence that the policy of not publishing the estimates was adopted on the advice of counsel. The object of the non-publication appears to have been to prevent the Commission from being held legally responsible for the estimates. It seems to have been thought that if the estimates were published with the by-law they might afford a ground for legal action, while if they were omitted entirely, and the by-law later validated by the Legislature, this danger would be avoided. The policy of the Commission was in plain disregard of the plain terms of the statute, If the provision had been thought an improper one, the Act could readily have been amended; there is, however, no

record of any request for an amendment. It may readily be doubted whether the Legislature would have been disposed to remove so salutary a check on the operations of the Commission. It is not a mere matter of legal technicality; it is of the very essence of the work of the Commission to give reliable, expert advice to the municipalities as to the cost of power.

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The result of the disregard of the statutory provision is clearly shown in the case of Port Arthur and Port William. The estimates had been given on the basis of a proposed development at Dog Lake, at an estimated cost of $3,000,000. Having received authority from the municipalities on this basis, the Commission without further consultation with the municipalities, proceeded with a development at Cameron's Falls, the cost of which is already nearly $7,000,000. and is ultimately to be $13,000,000. But by reason of the contracts with the municipalities and the non-publication of the estimates, it is at least very doubtful whether the municipalities are entitled to any legal redress or any escape from legal responsibility for the larger capital expenditure.

The Commission itself admits that the decision to develop at Cameron's Falls instead of Dog Lake was not made with sole regard to the needs of the two municipalities assuming the responsibility. Sir Adam Beck, the Chairman of the Commission, urged that

> "The Government is responsible, morally responsible for the deficit on account of the operation of that plant, owing to the fact that we were definitely directed to provide power for this pulp company, to meet the demand of the pulp that would be sold from time to time by the Government. The Government directed us to im tall a plant sufficient

The parity of the standard of the electricity provision is clearly shown in the case of Jeff's arbitration. The estimates had been given on the basis of a proposed development of the Lake, at an estimated cost of $2,000,000. Having received authority from the municipalities on this basis, the Commission without further consulting with the municipalities, proceeded with a development at Cameron's Falls, the cost of which is already nearly $7,000,000, and is ultimately to be $12,000,000. For by reason of the agreements with the municipalities and the non-publication of the estimates, it is at least very doubtful whether the municipalities are entitled to any legal redress or any damage from legal responsibility for the larger capital expenditure.

The Commission itself admits that the decision to develop at Cameron's Falls instead of Jeff Lake was made with sole regard to the needs of the two municipalities assuming the responsibility. Sir John Saxon, the Chairman of the Commission, urged that:

"The Government is responsible, morally speaking, for the delays on account of the operation of their plant, owing to the fact that we were definitely directed to utilize power for this city purposes. It was the demand of the city that would be sold from time to time by the Government. The Government directed us to instal a plant sufficient

"to take care of this company's business, making available 75,000 horsepower ultimately. They must have had in mind, as any Government would, this enormous areaoof not only timber but minerals that could not be offered for sale to the same advantage and by which they would get as good a price for power for this timber, for this pulpwood, if power was available to all tenderes; therefore, I say the Government is morally responsible."

The circumstances which gave rise to this claim made by Sir Adam Beck are referred to hereafter, but an important light is thrown on the attitude of the Commission by passages from the minutes of the Commission which show that at the time the estimates were given to the municipalities for a development at Dog Lake the Commission had in mind the possibility of a development at Cameron's Falls. It is not difficult indeed to believe that the Commission never had any serious intention of making a development at Dog Lake. It is certain at all events that the Commission did not take the municipalities fully into its confidence though it was ostensibly acting as their agent and trustee. It may have been thought that it would be acting in the best interests of the municipalities if the plans and intentions were not fully disclosed. If this is so it was a dangerous policy and one subversive of the scheme of the Act. When the municipalities placed their interests in the hands of the Commission they were entitled, if not to a controlling voice, at least to the frankest disclosure of the facts and the intentions of the Commission.

The figure issues which give rise to this claim made by Dr. Ada Pick are referred to earlier, but an important light is thrown on the attitude of the Commission by passages from the minutes of the Commission which show that at the time the minutes were given to the municipalities for a development at Dog Lake the Commission had in mind the desirability of a development at Gananoque's Point. It is not difficult indeed to believe that the Commission never had any serious intention of making a development at Dog Lake. It is certain as it appears that the commission did not take the municipalities fully into its confidence though it was necessarily acting as their agent and trustee. It may have been thought that it would be acting in the best interests of the municipalities if the plans and intentions were not fully disclosed. If this is so it was a dangerous policy and was unfavorable at the outset of the act. Then the municipalities placed their interests in the hands of the Commission they were entitled, if not to a contractual value, at least to the fiduciary obligations of the Trust and the interests of the Commission.

The failure of the Commission to carry out the understanding with the municipalities has resulted in a serious situation in the case of Fort William. If the development had been at Dog Lake, as was proposed when Fort William voted on its contract, the transmission line would have been brought into the two cities from the west approximately midway between them, and the price of power would have been the same to each. No discrimination was, of course, contemplated in the price of power as between the two cities. Reassuring statements were, in fact, made on this point on the public platform by the officials of the Commission.

The effect of making the development at Cameron's Falls instead of Dog Lake was to bring the transmission line from the north-east through Port Arthur into Fort William. It is said to be the fixed policy of the Commission to charge each municipality for that portion of the transmission line only which is necessary to serve the municipality. Applying this principle, power would be cheaper at Port Arthur than in Fort William, and still cheaper in the district north-east of Port Arthur, it being the declared policy of the Commission to "lop off" power at any point in the line and to charge the municipality or customer taking it only for that

The failure of the Commission to carry out the agreement with the municipalities has resulted in a serious situation in the case of Port William. If the development had been at Dog Lake, as was proposed when Port William voted on its contract, the transmission line would have been brought into the city miles from the most apparently midway between them, and the price of power would have been the same to each, or alternatively, assuming it is the policy to charge the same price for power in Kenora and Port William. Nevertheless statements were, in fact, made on this point on the public platform by the officials of the Commission.

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portion of the transmission line over which the power passes. It is stated on behalf of Fort William, and it is reasonable to believe, considering the situation of the two cities, that Fort William would not have entered into the contract with the Commission except on a basis of complete equality with Port Arthur as regards the price of power.

Several reasons are put forward by the Commission in justification of the change from Dog Lake to Cameron's Falls. It may be that some of these reasons would have prevailed with the municipalities and that they would have sanctioned the change. But they were not consulted. They now claim that the Province at large should come to their relief in meeting the cost of the development. It is necessary therefore to examine the grounds on which this claim is based.

4 - During the period while the contracts with Port Arthur and Fort William were under discussion before the electors, two pulpwood limits known as the Pic River limit and the Black Sturgeon limit were being advertised by the Government for sale by public tender. In each case the conditions of sale contained a clause to the effect that the successful tenderer should be entitled to obtain from the Crown the lease of a suitable waterpower to be agreed upon between the successful

tenderer and the Minister of Lands, Forests and Mines. Mr. S. A. Marks was the successful tenderer of the Black Sturgeon limit and Mr. J. J. Carrick of the Pic River limit. Marks assigned his interest almost immediately to Carrick, so that when the formal agreement was executed in May, 1917, Carrick appeared as the lessee of both limits. It is said that there was an understanding with the Minister that a lease of the Cameron's Falls site would go to the successful tenderer of the Pic River limits, though it is not clear why one of the other possible sites for a power development on the Nipigon River would not have answered the purpose as well. It is to be remembered that the power site at Cameron's Falls had been a subject of contention between public and private interests for years previously, and it is difficult to understand why the Government, with a knowledge of all the circumstances, should have entered into an arrangement with Marks or Carrick which would compromise its right to hold Cameron's Falls for public development. It would appear from the minutes of the Commission that as early as 19th December, 1916, when the contracts with Port Arthur and Port William were under consideration by the Commission, the Hon. I.B.Lucas, then a member of the Commission and of the Government, assured the Commission

Yukiyao and the Minister of Lands, Forests and Mines, Mr. G. A. Nicks was the successful tenderer of the Black Creek limit and Mr. J. A. Carlick of the Pile River limit. Mr. Nicks is an old Prince Rupert businessman in Carlick, as that was the formal agreement was executed in May, 1917. Carlick appeared on the lease of with limits. It is said that there was an understanding with the Minister that a lease of the Governor's Pulp site would go to the successful tenderer of the Pile River limits, though it is not clear why one of the other possible sites for a power development on the Kitimat River would not have amply served the purpose as well. It is to be remembered that the power site at Cameron's Falls had been a subject of controversy between public and private interests for years previously, and it is difficult to understand why the Government, with a wide table of all the alternatives, should have entered into a transaction like this, as Premier Bowser did, regarding the right to half Cameron's Falls for public development. It was August from the minutes of the Commission that on early as 1912 (Sessional Papers, 1913), when the Commission was first asked for two utilize hydro-electric municipalities by the Premier, Mr. Ross, [illegible], that a number of the Commission and of the Government, measured the Commission

that "the lease and option in connection with the Nipigon power situation had expired and the rights now rested in the Crown". However, it is quite clear that before the lease of the limits was granted and before the formal execution of the agreement between Carrick and the Government, the Premier, Sir William Hearst, and Hon.G.H.Ferguson, Minister of Lands, Forests and Mines, requested Mr. Carrick to relinquish his right to a lease of an undeveloped water power in consideration of the Government's undertaking to arrange for the supply of power by the Hydro-Electric Power Commission, at cost. The Communications between the Government and Carrick to this effect are a matter of public record and are not disputed.

5 - It was admitted in evidence by Sir William Hearst and Hon. I.B.Lucas that a change of policy on the part of the Government occurred between December, 1916, and March, 1917. Mr. Lucas said in his evidence "A new and comprehensive policy was then (December 1916) adopted by which Nipigon.....should be made available.....to all". And Sir William Hearst said: "These limits were put up in the usual way with the right to a water power. Subsequently to that the policy was devised..... that no private leases should be granted on the Nipigon".

that "the Lower and Upper St Lawrence with the Ottawa power situation had analysed and the rights now vested in the Crown". However, it is quite clear that before the issue of the Letter was granted and before the formal execution of the agreement between Ontario and the Government, the Premier, Sir Oliver Mowat, requested Mr. Gartshore to relinquish his rights to a lease of an undeveloped water power in consideration of the Government's undertaking to arrange for the supply of power by the Ontario-Quebec Power Transmission Co. The Commission's inquiry between the Government and Gartshore in this matter are a matter of public record and are not disputed.

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It is unfortunate that the policy adopted in March was not adopted sooner. If the policy proclaimed in March had been the policy of the Government in December it would have protected most effectively the interest of the Hydro-Electric Power Commission. It could have provided in the contract that the successful tenderer should take power from the Hydro-Electric Power Commission within a certain time, and in the event of failure to do so that the concessions would be cancelled. Such a provision would have insured the early development of the limits by the concessionaires and would have provided a market for the power immediately it was ready. Unfortunately there was no such term in the contract, and in May, 1918, the Government not being in a position to furnish a supply of power, an extension of the time for the development of the pulp limits was granted and it was provided in the extension agreement that:

> "The Grantee shall not be called upon or re-
> "quired to perform or enter upon the performance
> "of the terms, conditions, duties, or obligations,
> "or any of them imposed or binding upon him, as
> "in the said agreement (9th May,1917) set forth,
> "nor shall the payment and expenditures referred
> "to in the said agreement or any of them accrue
> "or be chargeable against the Grantee; nor shall
> "the Grantee be deemed to be in any default what-
> "soever under the said agreement, until such time

"as an adequate supply of electrical power
"is made available for the Grantee sufficient
"for the operation of the mills provided for
"in the said agreement."

The situation, therefore, when the present Government came into power was that the time for commencement of operations by the concessionaires of the pulp limits had been extended until such time as Hydro-Electric power was "available".

6 - It is contended that the present Government should have cancelled the concession in disregard of the undertakings given by its predecessors. "The remedy and means of forcing this contract is under clause 13.. .....You are in a perfectly safe position to cancel that concession" said Mr. Lucas. Fol. 745. The Government submitted the matter to the Courts and the Court took the view that the lessees of the limits were not in default and that "the plaintiff cannot compel the defendant to take the power" It is further contended that notwithstanding the decision of the Court the limits might have been cancelled by the Government by an arbitrary legislative power. On behalf of the Commission, Mr. Lucas argued "On March 15th, 1921, after the litigation was ended, after there was a judgment..... Mr. Kilmer, the Government Counsel, wrote declaring that

..... the Government are clearly entitled to cancel the concession. That is my answer to your question". Fol. 754. What the Government did in fact was to make a new contract with the Company under the terms of which the Company is required to construct its mills within a certain limited time whether Hydro-Electric power is available or not, so that the condition created by the undertakings of the later Government is solved, and the obligation is assumed by the Company to proceed within a limited time or in the alternative to forfeit its rights.

It is now claimed on behalf of Port Arthur and Fort William, and the claim is supported by Sir Adam Beck, that it was in order to implement the undertaking of the Government to Carrick that the development was undertaken at Cameron's Falls instead of at Dog Lake, and that the Government having in effect ordered the development at Cameron's Falls, should assume at least a part of the responsibility for it. The two cities, and in fact the officers of the Commission, differ as to the extent to which the Government should participate in this financial responsibility. The Mayor of Port Arthur clearly expressed his view that the System could and would ultimately meet all its obligations if the Government would allow the present deficits to be carried in a

suspense account. Mayor Matthews: Q.- If you had a free hand to sell, how soon would you make it carry itself? A.- That is a pretty hard question to answer; if you gave me five to ten years the whole Nipigon development would be sold. Q. Would it pay for itself then? A.-Yes. (FOL. 159) Mr. Gaby in his evidence took the same position. Q.- You would not suggest that the Government should take over this deficit and pay it off and not look to the System to make it good? A.- No, I would not do that; I would say in time the System should make good its deficit in the earlier years, and the statement we have prepared shows it will not be many years before it will be overtaken. Sir Adam Beck, on the other hand, claimed, "that the Government was responsible, morally responsible for the deficit..... ..... Owing to the fact that we were definitely directed to supply power for this pulp Company. (Fol.668) and ought itself to pay and cancel all the present deficits; and Mr. Morris, on behalf of Fort William, claimed that the Government should bear the full cost of all the additional expense incurred by the Commission in providing power for the concessionaires of the Pic River and Black Sturgeon limits. Mr. Morris: "The Province we think should write off, or absorb, a lot of the capital expenditure on that development..... I think it

was made in a hurry on account of the demand for the supposed pulp and paper companies, all of which was in the interest of the Province and the Government, and not of us..... I would think that the Province should go in to the extent of the power, i.e., over and above what these cities use". The difficulty of Mr. Morris' position is that whatever understanding there was as to equality of rates, and whatever lack of frankness there was on the part of the Commission as to its real intentions, the City of Fort William did in fact give the Commission an authority sufficiently broad to develop at Cameron's Falls. The City had conferred on the Commission full power to act as its trustee and agent and cannot in fairness be allowed to disclaim that authority.

As between the City and the Government this would seem to be a good answer. As between the City and its trustee, the Commission, the case is different, though there the difficulty is that the Commission has no funds or legal responsibility of its own. It acted in theory merely as the representative of the two municipalities of Port Arthur and Port William. This theory, however, does not relieve the Commission from the moral responsibility for undertaking the Nipigon Development without having either a firm contract with the concessionaires

of the pulpwood limits, or in the alternative, a definite understanding with the Government as to its responsibility. The real cause of the difficulty was that the Commission itself acted as the promoter of the undertaking, securing the sanction of the municipalities by one line of representation and the Government by another. Nor does the Commission appear to have been equally frank with the two cities of Port Arthur and Fort William. There is reason for believing that those who were active in supporting the project in Port Arthur had from the beginning anticipated that the development would be at Cameron's Falls, and when the question later came up as to whether the pulp mills in connection with the Pic River and Black Sturgeon limits should be located at Port Arthur or at Fort William the Commission was not in a position to be impartial as between the two cities. It was this willingness on the part of the Commission to allow the City of Fort William to proceed without a full disclosure of intention that gives a weight to Fort William's claim which cannot be overlooked. It is true that the Order-in-Council subsequently gave public notice of the intention to develop at Cameron's Falls, but the fair

of the Puyallup Limits, or in the alternative, a definite understanding with the Government as to its responsibility. The real cause of the difficulty was that the Commission itself acted as the promoter of the undertaking, causing the annexation of the municipalities by one line of representation and the Government by another. Had even the Commission appear to have been equally frank with the two cities of Port Arthur and Port William. There is reason for believing that those who were active in supporting the project in Port Arthur had from the beginning anticipated that the development would be at Cameron's Falls, and when the question later came up as to whether the pulp mills in connection with the Pic River and Alma Stuart's Limits should be located at Port Arthur or at Port William the Commission was not in a position to be impartial as between the two cities. It was this wil-lingness on the part of the Commission to allow the City of Port William to proceed without a full disclosure of facts which gave a valid to Port William's claim which cannot be overlooked. It is true that the Order-in-Council authorizing fully Have public notice of the intention to develop at Cameron's Falls, but the fact

and proper course would have been to have given the City of Fort William an opportunity of voting on the new project with its largely augmented expenditure and its altered geographical considerations.

Considerable evidence was taken with reference to the circumstances under which the concessionaires of the Pic River and Black Sturgeon limits failed to take the power, which by its undertaking with Mr. Carrick the Government was obliged to arrange for. It does not seem necessary for our present purpose to discuss these circumstances. They have been the subject of litigation between the Government and the successors to Mr. Carrick's interests, and the whole matter is still a subject of negotiation. It is important to point out, however, that one of the reasons alleged for the failure of the owners of the limits to proceed with their development was that they could not procure an "enforceable" contract for power. There were other terms in dispute between the parties, but the chief obstacle in the way of making a contract under which from 15,000 to 20,000 h.p. would have been employed in the development of these limits, appears to have been in the apprehension that the obligations assumed by the Commission in such a contract

and proper course would have been to have given the City of York William an opportunity of voting on the new project with its largely augmented expenditure and its already questionable profitability.

Considerable evidence was taken with reference to the circumstances under which the commissioners of the River and Harbor Improvement Limits failed to take the course which in the circumstances was the proper one for their guidance in the matter of limits of improvement and the amendment of the Act. It may have been necessary for our present purposes to discuss these circumstances. They have been the subject of litigation between the Government and the successors in the Contract's interests, and the whole matter is still a subject of negotiation. It is important to point out, however, that one of the reasons alleged for the failure of the owners of the limits to proceed with their development was that they could not proceed on commercially profitable terms. There were other terms in dispute between the parties, but the point observable is that they at a time when a property under which from 12,000 to 20,000 h.p. would have been employed in the development of these limits, appears to have been in the apprehension that the obligations assumed by the Commission in such a contract

would not have been enforceable as against the Commission. On this point your Commissioners beg to suggest that if there is any reasonable doubt as to whether such a contract is duly enforceable, the doubt should be set at rest by appropriate legislation.

It is of the utmost importance that any real difficulty that may stand in the way of the immediate development of those pulp limits should be promptly removed so that the system may be placed on a proper financial basis. The present situation is a most serious one.

The system last year showed a deficit of approximately $65,000.00 without making any charge for sinking fund or for water rentals. The books of the Commission itself show the deficit for last year as being $18,708.85, but this result was arrived at by calculating a number of credit items which are in dispute. Thus power was charged to the City of Port Arthur at an arbitrary rate of $25.00 per horsepower though payment was made by the City at the rate of $20.00 per horsepower, the balance of the charge being appropriated by the Commission out of certain reserves which were being held to the credit of Port Arthur.

Credit was also taken for an item of $42,077.57 due by the Nipigon Fibre Pulp and Paper Company which is now in liquidation. Interest instead of being calculated, as required by the Statute, at 6.2%, the average rate paid by the Government, was calculated at 5%, and by carrying this rate back over the construction period the Commission credited itself with the sum of $77,785.45 and with-held that amount from its interest payment to the Government. In addition to crediting these disputed items all charges for sinking funds, renewal funds and contingency funds were deferred.

Mr. G. T. Clarkson, the auditor, has submitted to us a statement of the Operating Costs and Revenue Account for the present year, based on ten months' operation, which is as follows:

Operation (including direct maintenance and administration expenses	$ 62,146.17
Water Rental (based on 50¢ per horsepower on power delivered to Port Arthur ..	4,388.00
Interest (on Nipigon Development at 6.2% . . .	408,340.57
Reserve for Renewals (on depreciable plant 1.023% of $4,628,440.77)	46,861.15
Reserve for Contingencies (25¢ per horsepower on power delivered to Pt.Arthur. . .	2,194.00
Total Operating Charges	$523,931.89

Revenue is shown as:

From Pt. Arthur (average load at $25. per horsepower) . . .	$219,409.28	
From Nipigon Fibre & Paper Co (75% previous maximum load). .	73,615.20	
Total Revenue		293,024.48
Deficit		$ 230,907.41

Credit was also taken for an item of $22,057.27 due by the Nipigon Fibre Pulp and Paper Company which is now in liquidation. Interest instead of being capitalized, as required by the Statute, at 6.2%, the average rate paid by the Government, was calculated at 5%, and by carrying this rate back over the construction period the Commission credited itself with the sum of $77,768.48 and with-held that amount from the Interest payable to the Government. In addition to crediting these disposal items all charges for disposal items, repairs and contingency funds were deferred.

Mr. G. T. Clarkson, the auditor, has submitted to us a statement of the Operating Costs and Revenue Account for the current year, based on the Commissioners' operations, which is as follows:

Operation (including direct maintenance and capitalization expenses)	
Water Rental (based on 80% per horsepower)	
Interest on Nipigon Development at 5%	
Interest on Nipigon Development at 6.2%	
Interest on $4,576,649.97	
Maintenance and Contingencies (20% per horsepower on power delivered to Port Arthur)	
Total Operating Charges	$623,921.89

Revenue is shown as:

From Port Arthur (average load at $12. per horsepower)	$219,409.29
From Nipigon Fibre & Paper Co (78% previous maximum load)	74,414.32
Total Revenue	293,823.61
Deficit	$330,098.28

From this statement it is apparent that the deficit for the current year's operations will be from $250,907.41 to $348,404.47, according as various hypotheses are applied; that is to say, it will depend for instance whether certain estimated items of income are realized, whether water rentals are calculated at fifty cents per horsepower or at one dollar, etc. Mr. Clarkson's computation does not include charges for sinking fund, which would be approximately $65,000. for the year. From these figures it will be seen that the System is at present running behind at a rate of in the neighborhood of $1,000. per day.

Your Commissioners have given careful consideration to the question how this deficit should be met and what steps should be taken to realize the most favorable conditions for placing the System on a self-supporting basis.

We believe that with the application of sound business judgment and a due and impartial regard for the interest of the Cities of Pt. Arthur and Ft. William, the Nipigon System can ultimately be placed on a self-supporting basis. It would seem inevitable that the Government would in themeantime have to advance the money to meet the accruing deficits; but with the increase of the load these deficits and the interest on them ought ultimately to be absorbed by the System.

From this assessment it is apparent that the deficit for the current year's operations will be from $[illegible],[illegible],[illegible] to $[illegible],[illegible],[illegible], assuming no further appropriations are appropriated. That is to say, it will depend for instance whether Alaska's estimated share of income are realized, whether water rentals are maintained at fifty cents per horsepower or at one dollar, etc. Mr. Clarkson's computation does not include earnings for electric fuel, which would be approximately $[illegible], for the year. From these figures it will be seen that the System is at present running behind at a rate of in the neighborhood of $1,000. per day.

Your Commission feels bound to express satisfaction to the question how this deficit should be met and what steps should be taken to realize the full capacity of the plant. The System as a self-supporting basis.

We believe that with the application of sound business judgment and a due and impartial regard for the interest of the City of Ft. Arthur and Ft. William, the Higgins System can ultimately be placed on a self-supporting basis. It would seem inevitable that the Government will be approached with a view to obtaining the money in that the interest and the interest of the land shows activity and the interest on them seems minimum as to absorbed by the System.

Schedule "B" contains certain diagrams showing what the revenue and deficits would be from year to year on certain suppositions. As a basic supposition it is assumed that the load on the Nipigon system will increase at the rate estimated by Mr. Gaby, Chief Engineer, of the Commission, as shown on page 1 of Schedule "A" and page 13 of Schedule "B", that is to say, beginning with a load of 12,000 h.p. in 1922, it is estimated that the load will in 1929 have increased to 70,000 h.p. While we adopt these estimates of Mr. Gaby for purposes of demonstration, and while we believe there is every reason to be optimistic as to the future power requirements of the Nipigon District, it is to be observed that Mr. Gaby's previous estimates of power requirements on which the Nipigon Developments was originally undertaken proved to be over-sanguine. However, taking Mr. Gaby's present estimates of the future power requirements as a basis, it is shown on page 15 to 20 of Schedule "B" what revenue and deficits would result if the estimated amount of power were sold under certain conditions. Thus it is assumed on diagram No. 5 on page 17 that the price for power to the municipalities is $20. per horsepower and to pulp mills $18. per horsepower; and that 50 cents per horsepower generated is paid to the Government for water rental, and that the interest rate on the

capital expenditure is to be calculated at 6.2% per annum diminishing to 5%, and the interest on the accumulated deficit at 5.5% per annum diminishing to 5%. These conditions are the most favorable which your Commission think they are justified in taking as a reasonable basis of calculation. The diagram shows that if these conditions are realized there will be an accumulated deficit which will in 1926 amount to over $750,000. and will thereafter decrease and ultimately disappear in 1933. If the assumed conditions, including Mr. Gaby's estimates of the load, are not realized the deficit will, of course, be larger.

The revenue as shown by this diagram is predicated, as stated, on a rate of $20. to the municipalities and $18. to pulp mills. These rates would be, in our opinion, a fair charge. The theory of the Power Commission Act of course is that the price for power is to be its annual cost, but in the case of the Nipigon System this would be manifestly impracticable. The rate for pulp mills must be considered in the light of the fact that competing interests are in a position to purchase or generate their power at comparatively low rates, and in the case of the rate for the municipalities the chief consideration is the

capital expenditure is to be calculated at 6.25% per annum diminishing to 3%, and the interest on the accumulated deficit at 7.5% per annum diminishing to 3%. These conditions are the most favorable which your Commission think they are justified in taking as a reasonable basis of calculation. The diagram shows that if these conditions are realized there will be an accumulated deficit which will in 1926 amount to over $750,000, and will thereafter decrease and ultimately disappear in 1933. If the assumed conditions, including Mr. Hay's estimates of the load, are not realized the deficit will, of course, be larger.

The revenue as shown by this diagram is predicated, as stated, on a rate of $30. to the municipalities and $18. to pulp mills. These rates would be, in our opinion, a fair charge. The theory of the Power Commission Act of course is that the price for power is to be its market rate, but in the case of the Sturgeon System this would be manifestly unreasonable. The rate for pulp mills must be considered in the light of the fact that competing interests are in a position to furnish or generate their power at comparatively low rates, and in the case of the rate for the municipalities the chief consideration is the

ability of the municipalities to quote attractive rates to industries. A rate of $20. per horsepower, while considerably higher than was anticipated by the municipalities when their contract with the Commission was entered into, would seem to be sufficiently low to give a reasonable impulse to the industries of the district.

The interest rate assumed in Diagram No. 5 is the rate authorized by the Power Commission Act, which provides that: "The Commission shall pay to the Treasurer of Ontario annually interest on the indebtedness of the Commission to the Province for moneys advanced to the Commission by the Province as may be from time to time determined by the Lieutenant-Governor in Council as sufficient to reimburse the Province the full amount of interest paid by the Government on moneys raised for the purposes of the Commission and the charges incurred by it in providing such money." In other words, the Government is neither to lose nor gain in the matter of the interest rate. Some of the moneys having been borrowed at short terms it is anticipated that in refunding the loans the interest may in future be reduced and this is the justification for the reduction of interest assumed in Diagram No. 5. It was claimed by Sir Adam Beck that an arrangement had been arrived at between the Commission

and the Government that the interest rate on the capital investment at Nipigon should be 5%. This statement was disputed by the Hon. Mr. Drury and by Hon. Peter Smith. The evidence is that at a meeting at which members of the present Government, membersof the Commission, and others, were present, someone proposed that the rate of interest to be paid by the Commission to the Government in respect of the Nipigon undertaking should be fixed at a lower rate than that paid by the Government. No definite rate seems to have been suggested, and some subsequent memorandum of the Commission show that both 4½% and 5% were considered. It is stated by Sir Adam Beck that it was his understanding that the Government would fix the rate at 5%. Hon. Mr. Drury, who recalled the conversation, said that when the rate was referred to it was in the most casual manner and that no reference was afterwards made to it. He points out that it would have required an amendment of the Power Commission Act to authorize the rate and that no such legislation was suggested by the Commission at the last Session. Nothing in fact was done or even said by the Government about the matter from the time of the interview referred to,

and the Government that the interest rate on the capital investment at Kipigon should be 5%. This statement was disputed by the Hon. Mr. Drury and by Hon. Peter Smith. The evidence is that at a meeting at which members of the present Government, members of the Commission, and others, were present, someone proposed that the rate of interest to be paid by the Commission to the Government in respect of the Kipigon undertaking should be fixed at a lower rate than that paid by the Government. No definite rate appears to have been suggested, and from statements made by members of the Commission show that both 4% and 5% were considered. It is stated by Sir Adam Beck that it was his understanding that the Government would fix the rate at 5%. Hon. Mr. Drury, who presided at the conversation, said that when the rate was referred to it was in the most casual manner and that no reference was afterwards made to it. He points out that it would have required an amendment of the Power Commission Act to authorize the rate and that no such legislation was suggested by the Commission at the last session. Nothing in fact was done or even said by the Government about the matter from the time of the interview referred to,

which was in January 1920. Interest payments before October 31st, 1921, were made at the statutory rate ; but when payment for October 1921 was made an amount of $71,785.4$ was deducted and retained by the Commission in respect of the interest during the whole of the construction period, this amount being the difference between a statutory rate and the alleged rate of 5%. Mr. Matthews, the Deputy Treasurer, stated that this deduction wxx made from the amount due in October 1921, was not brought to the attention of the Minister until a comparatively short time ago and that no claim for this large balance has yet been made on the Commission. The failure of the Treasury Department to demand payment of the balance, if it does not afford some color for the claims of the Commission for the lower rate, shows a laxness in the methods of the department which is open to criticism.

As to the rate to be paid to the Province for water rental it would seem from the evidence of Hon. Beniah Bowman that the rate of fifty cents per horsepower generated , assumed in diagram No. 5 before referred to, is considered by Mr. Bowman a fair one. In this view your Commissioners agree.

which was in January 1920. Interest payments before October 31st, 1921, were made at the statutory rate ; but were delayed for October 1921 was paid on account at $19,756.61 was deducted for Variance by the Commission in respect of the interest during the whole of the construction period, this amount being the difference between a statutory rate and the 6 1/2per cent. Surthermore, the Supply Commission, claimed that only commission was made from the amount due in October 1921, was all brought in the estimate of the Statutory rate ; comparatively short time ago and that no claim for this large balance has yet been made on the Commission. The failure of the Treasury Department to demand payment of the balance, if it does not afford some color for the claim of the Commission for the lower rate, shows a laxness in the matter of an department which is open to criticism.

As to the rate to be paid to the Province for water rental it might have been the statutory rate of Ontario Statute Commission that the rate of fifty cents per horsepower generated , assumed in diagram No. 2 before referred to, it (assumed by Mr. Barnes a fair one. In this view your Commissioners agree.

As between the Cities of Port Arthur and Fort William, your Commissioners feel that there ought to be complete equality of treatment by the Commission in the matter of both low tension and high tension power and without regard to the fact that Port Arthur is nearer the source of power. The zone of equal rates should be extended to any improved lands contiguous to the municipalities, and there is much to be said in favor laying down a general principle that in view of the responsibility for the Nipigon development assumed by the cities of Port Arthur and Fort William, power should not be sold in any part of the unimproved portion of the district at a lower rate than to Port Arthur and Fort William.

A reduction of the interest rate, as suggested by Sir Adam Beck, would mean the bonusing of the Nipigon system by the rest of the Province to the extent of the difference between the rate fixed and the rate actually paid by the Government for the money. Your Commissioners could not recommend any such course.

What we do suggest is, that the system should be managed with a view to keeping the deficits as low as possible, that all legitimate charges should be debited against the system and that the Government should in the meantime advance the money to meet the deficits, all moneys advanced by the Government to be held in Suspense

Account, to be reduced and wiped out so soon as the revenues of the System permit. The assistance of the Government in this respect might well be conditioned upon the observance of such of our recommendations as receive the approval of your Government.

We finally suggest that as the best results in dealing with the Nipigon system cannot be attained without close cooperation between the two cities of Port Arthur and Fort William, it might be made a condition of the assistance to be given by the Government that effective means should be taken to insure such cooperation whether through some form of joint control, or otherwise.

All of which is respectfully submitted.

Dated at Toronto the day of November 1922.

(12) - Fo. 64-66 - MR. MORRIS: The Province, we think, should write off or absorb a lot of the capital expenditure on that development.....It was made at an inopportune time. I think it was made in a hurry on account of the demand for the supposed pulp and paper companies, allof which was in the interest of the Province and the Government and not of us..... They developed three times the power we need.....The Province get all the benefit from the timber limits... I would think the Province should go in to the extent of the power that is over and above what these two cities use. I think the Province should assume one-third or one-half of the total outlay. They should wipe off half the capital cost.

(13) -Fol.651 -HON. BENIAH BOWMAN: We submitted a draft lease to the Hydro and in that lease I think we asked for $1 per horsepower.

Q.- What do you think would be a fair price to charge to the Hydro or how far would the Government be prepared to go? The Hydro in its statement submitted to us has put a rate of 50¢ per horsepower sold?

A.- Well, I think we would have no difficulty with a commercial company in getting a dollar per horsepower. Of course with the situation as ~~ixxix~~ I understand it it might be possible to reduce that for the Hydro.

(14) - Fol. 655 - SIR ADAM BECK: The Company were told in the presence of the Government that if this 5% interest was made available in the interim, we could give them power at a certain price.....and the Government in a general way led me to believe that we were to have 5% money....it was not binding.....In the meantime, with the full knowledge of the Government, we have only accredited them at the rate of 5%. The Treasury Dept. has known it and we have never heard any exception taken to it.

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(15) - Fol. 560 - PREMIER DHURY ; I have a recollection of a proposition being made in January of of 1920 at which time the Government was anxious to somehow or other get a contract from the Hydro by which the Great Lakes Paper Co. could proceed with their development, and at one of the conferences .....a proposition was made in a casual manner by Sir Adam Beck, pretty much in these terms: "If we give a contract at a fixed rate, and an enforceable contract, could the Government consider a fixed rate of 5% for the money used in our Development?" The discussion went no further; there was no understanding reached; there was no undertaking given by the Government.....I knew it was unsound financially.....it was contrary to the Power Commission Act of 1914.

(16) - Fol. 636 - HON. PETER SMITH: Q.- Mr. Gaby told us yesterday.....an agreement was there made by the Government, or a promise made, that the rate of interest should be fixed at 5% in respect of Nipigon?
A. - Well, I cannot recall anything about it. I never remember of anything of that being mentioned in my presence.

(17) - Fol. 560 - PREMIER DRURY: ...The proposition was made in a casual manner by Sir Adam Beck....
(See also #15)

(18) - Fol. 560 - PREMIER DRURY: ...The Province at large could not be expected to carry loads in any part of the Hydro department, and in the second place it was contrary to the P.C.A. 1914. If there had been any consideration, the first step for it would have been preparation of legislation which would have ~~xxxxxxxxx~~ amended subsection 1A of Sec.15 of the P.C.A. It was mentioned as I said sometime in January, I think, 1920,.....It was never mentioned again and never considered.

(17) - Fol. 560 - PREMIER BRUNY: ...The proposition was made in a general manner by Sir Adam Beck....
(See also #18)

(18) - Fol. 560 - PREMIER BRUNY: ...The Province at large could not be expected to carry loads in any part of the Hydro department, and in the second place it was contrary to the F.O.A. 1914. If there had been any consideration, the first step for it would have been preparation of legislation which would have remunerated subsection 14 of Sec.18 of the F.O.A. It was mentioned as I said sometime in January, I think, 1920,..... It was never mentioned again and never considered.

(19) - Fol. 799-800 - MR. MATTHEWS, DEPUTY TREASURER:

Q. - ...The Treasurer stated to us afterwards that the fact of the shortage existing wasn't brought to his attention till about 2 months ago?

A. - I think he is correct in his statement.

Q. - And I understood from you also that you took no steps to bring it to the attention of the Hydro and require payment of it?

A. - Well, beyond the talk I had with Mr. Gilmour, the Hydro treasurer at the time payment was made.....I assumed the matter had been discussed between the Government and the Hydro.

Q. - Isn't it rather unusàà that such a large sum as $70,000 is left all this time without any attempt to collect it?

A. - Well we always had it in mind for we didn't know but what the Government was dealing with the matter.

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